



February 6, 2001

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2001-0470

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143945.

The City of Laredo (the "city") received a request for information relating to drug testing of city police officers and firefighters, including the names of all such employees who have taken drug tests over the past two years and the results of the tests. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that is made confidential under other statutes. In this instance, you assert that the submitted information is confidential and must be withheld from the requestor under the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The Medical Practice Act includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the Medical Practice Act prevails over the more general provisions of chapter 552 of the Government Code.¹

In this instance, you represent to this office that under the city's drug testing program, the Medical Review Officer, a physician, is personally involved in the administration of employee drug tests and the creation of records of the test results. You further explain that the Medical Review Officer forwards reports of the results of drug tests to the Employee Health Nurse, who maintains those records for the city. You also state that the Employee Health Nurse provided the submitted information to you. Based on your representations and our review of the information in question, we conclude that it is governed by the Medical Practice Act. *See* Occ. Code § 159.002(c). You do not inform this office, and it does not otherwise appear, that disclosure of the submitted information to this requestor would be consistent with the authorized purposes for which that information was first obtained. *Id.* Furthermore, there is no indication that any tested employee has given his or her written consent to the release of any of the submitted information. *See* Occ. Code §§ 159.004(5), .005. Accordingly, we conclude that the submitted information must be withheld from the requestor, in its entirety, under section 552.101 of the Government Code in conjunction with the Medical Practice Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

¹*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

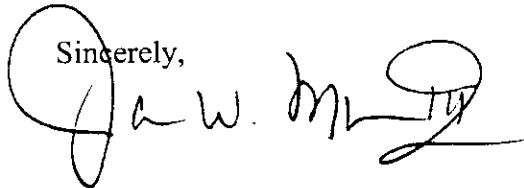
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143945

Encl: Submitted documents

cc: Ms. Kelly Hildebrand
Laredo Morning Times
P.O. Box 2129
Laredo, Texas 78044
(w/o enclosures)